IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Chamber Summons No. 661 of 2004
in
Suit NO. 781 of 1987

Union Bank of India ... Plaintiffs
vs.
M/s. Roshan Enterprises & ors. ..... Defendants

Mr. Subodh Joshi i/b.
Lokhandwala & Co., for Plaintiffs
None for defendants.

CORAM: **ROSHAN DALVI J.**
Date: 19/12/2005

P.C.

The Plaintiff bank sued the defendants for recovery of a sum of Rs.4,06,577.75 along with interest at the rate of 17.5% per annum upon a loan taken by the defendants and for a declaration that the property described in the schedule in Exhibit "C" to the plaint is validly mortgaged to the Plaintiff bank.

Consent terms were entered into between the parties on 11.1.1990. As per the consent terms the defendants were to make the payment of the decreetal

amount by 30.6.1990. Court Receiver was appointed pending the suit, with the power to sell if the defendants committed default. The defendants defaulted. Certain meetings were fixed by the Court Receiver for taking possession on 16.8.91 . Defendant no.3 refused to hand over possession of the mortgaged properties to the Plaintiffs. Defendant no.3 informed the Court Receiver that he had already transferred the property to the Society, being Sai Roshan Coop. Housing Society.

The Plaintiffs appear to have done almost nothing since the defaults were made by the defendants except an attempt for taking possession of the property on 16.8.1991.

Court Receiver has submitted a report to the court on 26.8.2002. Receiver's submission shows that the possession of the property could not be taken since the building constructed was not the property mortgaged to the bank and the flats were handed over to the flat purchasers and the flat owners have formed the society known as Sai Roshan Coop. Housing Society. The

Receiver was handed over xerox copy of the registration certificate of the Society issued by the Registrar of Cooperative Societies.

Receiver applied to the court for directions to take steps for executing the decree and for further directions. I am told that the Court Receiver was discharged. Order of discharge of the Court Receiver is not shown. I am told that the order would be in the papers of the Court Receiver.

This Chamber Summons is in the form of an appeal. It takes exception to the Court Receiver being discharged. The affidavit in support of the Chamber Summons states what the court should have done instead. In the circumstances this Chamber Summons does not lie. The Plaintiffs shall be entitled to executed the decree in any other mode provided in section 51 of the CPC. Chamber Summons disposed of accordingly. No order as to costs.

(ROSHAN DALVI J.)